IN THE

Supreme Court of the United States

October Term, 1952
No. .....

JENNIE B. DOWNEY,

Petitioner,

vs.

HERBERT BECK,

Administrator, Respondent and Appellee.

BRIEF OF RESPONDENT AND APPELLEE.

To the Honorable Fred Vinson, Chief Justice, and Associate Justices of the Supreme Court of the United States:

Opening Statement.

The Order of Mandate of this Honorable Court is to the effect that the United States Court of Appeals consider this case in the light of *Beck v. West Coast Life Ins. Co.*, 241 P. 2d 544. This the Court did, and found two essential distinctions between the case at bar and the said case referred to.

The term "in the light of," used by this Court, means to apply the law as stated in that case to the extent that it is applicable to the case in question. It does not mean to reach the same judgment based on different facts and different applicable laws.

(a) *Beck v. West Coast* considers a California contract under California law. California law is not applicable in the interpretation of a contract which was neither applied for, executed or delivered in California, and which was applied for in the State of Iowa, executed in the State of Indiana, and delivered in the State of Iowa, and that the law of the State of Iowa and of the State of Indiana do not follow the law as set out in *Beck v. West Coast Life.*

(b) The contract in question here is not the same as in *Beck v. West Coast.* In the California case the contingent beneficiary named was a stranger to David A. Downey, the primary beneficiary, the murderer of the assured, while in the case at bar the contingent beneficiary is the mother and only heir of the murderer, and she in turn is her only heir. The policy of law which prevents the primary beneficiary from taking the proceeds also prevents his heirs and estate.

The Order of Mandate is consonant with the view that the law as stated in *Beck v. West Coast* should be applied only to the extent that the facts are similar.

21 C. J. S., Courts, Secs. 209-210, p. 380 *et seq.*

Respondent can find no authority to the effect that the law in Iowa is in conformity with the law as set out in *Beck v. West Coast* in construing a contract such as here in question. To the contrary all laws that can be found on the subject in all other states except in California, as announced in *Beck v. West Coast,* support the conclusions reached by the United States Court of Appeals in this case. When no law is determined in any state covering a particular question, the Court may consider the prevailing law, and the Court may determine what the

law should be. This is what the United States Court of Appeals did.

De Long v. Jefferson Standard Life Ins. Co., 109 F. 2d 585;

Lincoln Nat. Life v. Ohio, 111 F. 2d 307 at 308;

Preston v. Aetna Life, 174 F. 2d 10, cert. den. 338 U. S. 829.

As will appear from the transcript of record, on June 11, 1952, the United States Court of Appeals made its "Order of Submission and Remanding Cause." [R. 147.] The provision therein for remanding the matter to the District Court, for the purpose of permitting the parties to introduce further evidence or to file stipulations there with reference thereto, was in pursuance of a motion made by counsel for Respondent, together with his affidavit accompanying the motion, wherein was set out the fact that the contingent beneficiary named in the policy is the mother of the disqualified primary beneficiary, and he in turn was her sole beneficiary. The purpose of this was to more fully diminute the record in support of Respondent's contended distinction between the beneficiary clause in the policy in question here and the one in the case of *Beck v. West Coast*. The Court believed such diminution of record desirable, and therefore made the provision contained in the said Order of Submission. [R. 147.] However, before opportunity was had to submit such further evidence in the District Court, the Petitioner herein made the Notice of Motion, and Motion to Set Aside the Order, as indicated on pages 148, 149, 150 and 151 of the Transcript of Record, on the ground that the Mandate did not provide therefore. On page 152 of the Transcript of Record, is the Order of the

Court submitting the said Motion, but no Order was made thereon. Thereafter, the Opinions of the Court were filed. As will be observed from the concurring opinion of Judge Fee, though he was satisfied with the Record as it stood, he was of the opinion that the parties should have been permitted to proceed in the District Court with the further taking of evidence.

At page 15 of Petitioner's Brief it is stated:

> "At the very outset the Court of Appeals said it was standing by its former judgment and that if Petitioners here expected any relief, they would have to go back to the Supreme Court of the United States."

Though such a statement is *de hors* the record, it is not correct. The fact is that after lengthy argument, the Court pointed out to counsel for petitioner the distinction prevailing between the case at bar and *Beck v. West Coast Life Insurance Company,* 241 P. 2d 544, and that complying with the mandate of this Honorable Court and applying the facts and the law of that case to the instant case, by reason of the distinction between the two cases, it must hold for the Administrator as it did in its former opinion. After provocative and directive argument by counsel for Petitioner, the Court stated, that notwithstanding his argument, the Court is satisfied with its conclusions reached in the former opinion and that counsel for Petitioner could exercise his rights before the Supreme Court of the United States if he was dissatisfied.

On page 27 of Petitioner's Brief, Petitioner states that the Court arbitrarily refused to consider the laws of

Iowa or Indiana in the construction of the contract with the following as a quotation from the Opinion of the Court stated in italics: "We need not inquire into the law of Indiana where the policies were issued, or of Iowa, where the policies were delivered." This quotation is misleading. We will assume that the reference so made in the Petition in giving this quotation as applicable to the question of construction of the contract in accordance with the laws of Iowa or Indiana, is inadvertent. First, this quotation [R. 139] is from the first Opinion of the Court before the Order of Remand by this Honorable Court and not the Opinion under consideration. Second, it is not at all in relation to the construction of a contract with reference to the laws of Iowa, Indiana, or any other state, but is with reference to the consideration of the question of civil death, which disability can only be imposed by the State of Colorado where the culprit was convicted and sentenced. And third, if the quotation were not an emasculated one, the reading of it would at once become apparent of the fact that it applied to the discussion of *civiliter mortuus*, and not to the construction of contracts. It reads as follows:

> "We need not inquire into the law of Indiana where the policies were issued, or of Iowa, where the policies were delivered. Neither Indiana nor Iowa, like California, could impose a disability upon a Colorado life convict non-existent under Colorado law."

ARGUMENT.

In the opinion of Respondent, there is but one real issue for this Honorable Court, and that is "Did the United States Court of Appeals in its Opinion and concurring opinion determine the case in pursuance of the Order of Mandate of this Court" to the effect that it be "further considered in the light of *Beck v. West Coast,*" and is there such distinction between the two cases which justifies the United States Court of Appeals in arriving at a judgment different than the one made in *Beck v. West Coast.*"

From a reading of the Order of Mandate by this Honorable Court it is not unreasonable to presume that the Court did not make its Order based on the relative merits of the issues raised, but rather on the representation by Petitioner that the facts in the case at bar and in *Beck v. West Coast* are identical.

The outstanding distinctions between the contract involved in *Beck v. West Coast* and the case at bar are that the law applicable is different and that the contract in question is different.

(a) In *Beck v. West Coast,* the policy as applied for, was executed by a California company in California and delivered in California, and the law applicable in the construction of the contract is the law of California, and that the policy in question in this case was applied for in the State of Iowa, executed in the State of Indiana by an Indiana Company, and delivered in Iowa, and is to be construed by the laws of the State of Iowa (or Indiana).

(b) That the contingent beneficiary provided for in *Beck v. West Coast* was a stranger of the primary

beneficiary, while in the case at bar the contingent beneficiary is the mother and only heir of the primary beneficiary who is disqualified by reason of his having murdered the assured, and the said primary beneficiary in turn is the only heir of the mother, the contingent beneficiary. The public policy which denies the benefits of a life insurance policy to one who murdered the assured applies equally to his heirs and estate.

POINT I.

The Iowa (or Indiana) Law, Under Which the Contract Is to Be Construed Differs From the California Law.

There is no dispute as to the facts that the policy construed in *Beck v. West Coast* was a California contract, interpreted under the laws of California, and that the contract in the case at bar is an Iowa (or Indiana) contract, and that the laws of the State of Iowa (or Indiana) became a part of that contract. This is not disputed as evidenced by Petitioner's Petition and Brief, pages 8, 26, 27 and 28.

The law to be applied is the law of the state where the policy of insurance was completed.

Summit v. Ins. Co., 123 Iowa 681, 99 N. W. 563;
Mutual Life v. Johnson, 293 U. S. 335.

With the exception of *Beck v. West Coast*, Respondent has been unable to discover any decision which holds that a provision in a life insurance policy or a will providing for a contingent beneficiary upon the death of the primary beneficiary can be disregarded and the proceeds ordered to the contingent beneficiary unless the condition has been complied with. The latest case identical with *Beck*

v. West Coast and decided after that case is directly in point. Though that case, cited hereinbelow, referred to *Beck v. West Coast* in its opinion, it did not follow it.

Bullock v. Expressmen's Mutual Life, 234 N. C. 254, 67 S. E. 2d 71, decided Oct. 17, 1951.

Other authorities on the subject are the following. Some of these refer to the beneficiary clause in wills rather than life insurance policies but it is quite established in law that the beneficiary clause in a policy is to be construed in the same manner as in a will. *Beck v. West Coast* in its opinion agrees that such is the rule of law.

In re Waring, 293 N. Y. 18, 56 N. E. 2d 543.

"The test is, could these children take at the death of the widow under any contingency if their mother had been alive. The answer is No.' "

Coffee v. Haynes, 124 Cal. 51.

Here the Court insisting on strict interpretation in accordance with the language, state:

"We cannot agree with Appellant that civil death is identical with physical death'

Avery v. Everett, 110 N. Y. 317.

This case holds that where in a will the estate was to go to "A" and that upon the death of "A" to "B," the conviction of "A" of a felony resulting in civil death is not death in fact and the contingent beneficiary "B" does not get the estate.

57 Am. Jur., p. 818;

Schmidt v. Maryland Life Assurance Co., 112 Iowa 41, 83 N. W. 800, 5 L. R. A. 141, 84 Am. St. Rep. 323.

The law as stated in the above authorities is concurred in, in the dissenting opinion in *Beck v. West Coast.*

In support of contention by Petitioner that the prevailing law, and therefore presumably the law of Iowa or Indiana, is the same as stated in *Beck v. West Coast,* citation is given of *United States v. Kwasnewski,* 91 Fed. Supp. 847, and *Metropolitan v. McDavid,* 39 Fed. Supp. 228, two United States District Court cases. A reading of them will immediately make it apparent that the issues in neither of those cases are the issues involved here, though there was provision in those policies for an alternate beneficiary in the event the primary beneficiary be not living. However, in the case of *United States v. Kwasnewski,* the only point involved was whether the disability, and the denial of the proceeds to a life policy to one convicted of murder applied equally to one who committed the homicide, but was found "not guilty by reason of insanity." In the case of *Metropolitan v. McDavid,* the issue was whether the disability applies to one found guilty of manslaughter only. In that case the person named as alternate beneficiary and the person who was the beneficiary through administration of assured's estate was one and the same, to-wit, the mother of the deceased. There was no issue as between an administrator and a contingent beneficiary, as here.

The law of Iowa or Indiana, having become a part of the contract in question, and the contract being required to be interpreted in the light of that law, we find that the law of Iowa, which must be presumed to be that of the general prevailing law of the great majority of states, is, that when a question arises in the interpretation of a life insurance policy, as in a will, if such interpretation be needed, the policy of the law is to favor natural heirs

in preference to others. Many states have by statute enacted provisions favoring the devolvement of the property of a deceased on those who would be entitled thereto by the laws of descent and distribution. There is no issue here but what David A. Downey, the primary beneficiary, is not entitled to the proceeds. Applying the present circumstances to the prevailing laws, the policy would read, "To David A. Downey, if living; otherwise to Jennie B. Downey, his mother, and if he be living and disqualified, to his heirs."

Jurneymen v. Bristol, 17 Cal. App. 576, 120 Pac. 787;

Yeates v. Yeates, 179 Ark. 543, 165 S. W. 2d 996;

Dahmer v. Winsler (Ill.), 182 N. E. 799;

Hutchinson v. Arnt (Ind.), 1 N. E. 2d 565, 4 N. E. 2d 202;

Mooney v. Tiles (Conn.), 149 Atl. 515;

Maddock v. Haines, 88 F. 2d 350.

The above authorities are cited, not because there is any ambiguity or uncertainty in the beneficiary clause of the contract, and in the contract in question in *Beck v. West Coast,* the Court stated there was no such ambiguity, and of course there is no ambiguity in the contract in question here. However, if it be suggested that the intent of the parties was not in accord with the specific language, the intent of the parties is supported by the policy of the law as above demonstrated, there being no evidence to the contrary introduced in this case.

POINT II.

The Contract in the Instant Case Is Different Than the One in Issue in Beck v. West Coast.

The policy in *Beck v. West Coast* provided for a contingent beneficiary, as follows, "Jettie Knoll, a friend." In the case at bar the contingent beneficiary is "Jennie B. Downey, mother in law," who is the mother of the assured's husband, the primary beneficiary and the person convicted of the murder of the assured. The mother is the heir of the convicted murderer, and the murderer in turn is the heir of the contingent beneficiary. The policy of law which denies the benefits of life insurance to one who murders the assured, applies equally to his heirs and estate. This is the general prevailing law, including California and Iowa. In this essential element, the policy in question differs from the one in *Beck v. West Coast* where the contingent beneficiary was a friend of the assured. The *per curiam* opinion of United States Court of Appeals did not go into this phase of distinction between the two cases, but the Concurring Opinion of Judge Fee discussed it at some length, and suggested that Respondent should have been permitted to take further evidence on this question, though he believed the record as sufficient to sustain his conclusion.

Meyer v. Johnson, 115 Cal. App. 646 at 650:

> "By such a rule many a beneficiary, aged or infirm and contemplating a young and healthful assured, would be tempted to commit a crime which would enrich his heirs, although it were too late to enrich himself. Indeed many a man has committed atrocious crimes for the benefit of his children."

91 A. L. R. 1486 at 1487.

It being necessary to consider the Iowa law in this particular, we cite the following:

> *Schmidt v. Maryland Life Assurance Co.,* 112 Ia. 41, 83 N. W. 800, 51 L. R. A. 141, 84 Am. St. Rep. 323.
>
> "Neither the beneficiary nor her children, nor her assignee, can recover because of the wrong perpetrated by her."

Also, *Parker v. Potter,* 200 N. C. 384, 157 S. E. 68:

> "Conversely, if a husband insures his life for the benefit of his wife and afterwards takes her life, neither he nor his estate will be permitted to profit by his wrong."

POINT III.

The Questions Raised by Petitioner Are Without Merit.

The contentions of Petitioner are to the effect that the contingent beneficiary has a vested interest, which the United States Court of Appeals disregarded; that David A. Downey, being civilly dead was, for the purpose of this proceeding dead in fact so as to entitle the contingent beneficiary to the proceeds; that the United States Court of Appeals rewrote the policy, eliminated the name of the contingent beneficiary therefrom and substituted the Administrator of the assured, who is not named in the policy, and that by doing so, it violated the Fifth and Fourteenth Amendments to the United States Constitution.

a) There can be no vested interest in a policy where the assured has the right to change beneficiary, as here.

This is so elementary that it requires no extended argument and is the prevailing law in Iowa as in other states.

Beed v. Beed, 222 N. W. 442, 207 Ia. 954.

> "In the recent case of Jobson v. N. Y. Life Ins. Co., 199 Ia. 772, 202 N. W. 578, we considered a situation somewhat similar to that involved in the instant case. In said case we recognized the settled rules in this state that, where a right to change beneficiary is reserved in the policy, the beneficiary named acquired no vested interest in the policy and that the person insured has the right at any time he may see fit to change the beneficiary."

To the same effect is:

Townsend v. Fidelity & Casualty of New York, 144 N. W. 574, 163 Ia. 713.

We have read the authorities cited on this point by Petitioner including the Iowa cases cited, and they are not in point. Some of these are with reference to mutual benefit societies, where the membership certificate limits the class of persons who may be beneficiary, or cases involving the right to change beneficiary, rights of creditors upon death to the proceeds, or the liability for transfer tax upon death of assured as in the federal cases cited. The case cited by petitioner, *Carpenter v. Knapp,* 101 Ia. 712, 70 N. W. 764, holds contrary to his contention. It states:

> "It is also well settled that where the policy reserves the right to change beneficiary, the person named in such policy acquires no vested right therein or in the insurance which it represents."

We do not consider the point as to whether there is a vested interest in a policy of great import here in any

event, as the very right of the contingent beneficiary is dependent upon the occurrence of the death of the primary beneficiary.

To say that the Court rewrote the policy by eliminating the contingent beneficiary, substituting an unknown person—the administrator—is specious because the very issue of this case is whether the contingency by which Jennie B. Downey would be entitled to take has occurred by which she would be entitled to the proceeds. The contention of Petitioner, that the United States Court of Appeals reached into the blue sky to select the Administrator of the assured's estate as the beneficiary is not of sufficient merit to warrant discussion. The common law, without exception, and the statutes in most states, provide that where the beneficiary is the murderer of the assured, unless some alternate is qualified by the provisions of the policy, that the administrator or personal representative of the assured is the person entitled to the proceeds.

West Coast Life v. Crawford, 58 Cal. App. 2d 771;

Meyer v. Johnson, 115 Cal. App. 646, 70 A. L. R. 1543;

20 Cal. L. Rev. 210;

Beck v. West Coast, 241 P. 2d 541.

Further contention is made by the Petitioner that the primary beneficiary is *civiliter mortuus* and that it was the intention of the assured that in this instance, the contingent beneficiary should receive the proceeds as if he were dead in fact, and that the contingency provided for in the policy has therefore occurred. This reasoning is without merit for two specific reasons: (a) The State of Colorado makes no provision for civil death, there is no such thing in that state as *civiliter mortuus;* (b) assuming the

State of Colorado would have made provisions for *civiliter mortuus,* it could not in any event apply to the primary beneficiary here, for the reason that at the time the rights of the parties in the insurance policy were determined, to-wit, at the death of the assured, he was neither charged, convicted nor sentenced for any crime.

Hall v. Crook, 174 N. W. 519 (Minn.);

Pallas v. Misericordia, 34 N. Y. S. 2d 881 at 883.

The further reason for the inapplicability of civil death is that, notwithstanding the other objections to the contention as above, civil death is never regarded as death in fact for the purpose of the vesting of beneficial rights as in this instance:

Coffee v. Haynes, 124 Cal. 561;

Avery v. Everett, 110 N. Y. 317;

50 American Jurisprudence 818.

Conclusion.

From the foregoing it is apparent that the case at bar is not identical with *Beck v. West Coast Life Ins. Co.,* 241 P. 2d 241. There is both a different kind of beneficiary clause in the contract, and different laws applicable in the construction of the contracts involved. *Beck v. West Coast* is not in accord with the prevailing law and the United States Court of Appeals determined the law of the state where the contract was completed. The petition should be denied.

Respectfully submitted.

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